

---

# Table of Contents

---

PREFACE .....	v
ACKNOWLEDGMENTS .....	xI
TABLE OF CASES.....	xxxvII

## Chapter 1: Overview of Dispute Resolution and Conflict Management .....

1	
A. The Nature of Conflict and Disputes .....	2
1. Sources of Conflict .....	2
a. Theoretical Underpinnings.....	2
Points for Discussion .....	3
b. An Analytical Approach .....	4
BERNARD MAYER, THE DYNAMICS OF CONFLICT RESOLUTION: A PRACTITIONER'S GUIDE .....	4
Points for Discussion .....	5
2. The Life Cycle of a Dispute.....	6
B. Processes for Resolving Disputes .....	8
1. Positions and Interests .....	9
2. Adjudicative Processes .....	10
3. Consensual Processes.....	11
4. Mixed Processes.....	12
C. What Process Is Appropriate? The Great Debate over Settlement and ADR .....	14
1. The Strong View .....	15
OWEN M. FISS, AGAINST SETTLEMENT .....	15
2. The Responses .....	20
CARRIE MENKEL-MEADOW, WHOSE DISPUTE IS IT ANYWAY?: A PHILOSOPHICAL AND DEMOCRATIC DEFENSE OF SETTLEMENT (IN SOME CASES).....	21
Points for Discussion .....	24
D. The Institutionalization of ADR .....	27
1. Institutionalization in the Courts .....	27
FRANK E.A. SANDER, VARIETIES OF DISPUTE PROCESSING .....	28
Points for Discussion .....	31

2. Institutionalization in Government Agencies .....	32
3. Institutionalization in the Private Sphere .....	33
E. Dispute Resolution and Lawyers .....	34
1. Headwinds and Tailwinds: The Involvement of Lawyers in Alternatives to Litigation .....	35
LEONARD L. RISKIN, MEDIATION AND LAWYERS .....	36
Points for Discussion .....	38
2. The Roles and Skills of the Lawyer .....	40
Points for Discussion .....	41
<b>Chapter 2: <i>The Attorney-Client Relationship</i></b> .....	45
A. Preliminary Considerations .....	46
1. Basic Models .....	46
ROBERT D. DINERSTEIN, CLIENT-CENTERED COUNSELING: REAPPRAISAL AND REFINEMENT .....	47
ROBERT F. COCHRAN, JR., JOHN M. A. DIPIPPA & MARTHA M. PETERS, THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING, 3D ED. ....	48
Points for Discussion .....	49
2. Incentives in the Attorney-Client Relationship .....	52
ROBERT H. MNOOKIN, SCOTT R. PEPPET & ANDREW S. TULUMELLO, BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES .....	53
Points for Discussion .....	53
3. Lawyers' Ethics .....	60
Points for Discussion .....	61
4. Allocation of Authority .....	62
LYNN MATHER, WHAT DO CLIENTS WANT? WHAT DO LAWYERS DO? .....	63
Points for Discussion .....	64
B. Interviewing .....	66
1. Overview of the Process .....	66
a. Introduction .....	66
JANICE NADLER, RAPPORT IN NEGOTIATION AND CONFLICT RESOLUTION .....	67
Points for Discussion .....	68
b. Preliminary Problem Identification .....	68
c. Detailed Problem Identification .....	69
d. Exploration of Positions and Interests .....	69
e. Development of Legal Theory .....	70
f. Next Steps .....	70
Points for Discussion .....	71

2. Questioning and Listening.....	72
a. Questioning.....	72
SANA LOUE, A GUIDE TO BETTER CLIENT INTERVIEWS.....	74
Points for Discussion.....	75
b. Listening.....	76
JENNIFER K. ROBBENNOLT & JEAN R. STERNLIGHT, PSYCHOLOGY FOR LAWYERS: UNDERSTANDING THE HUMAN FACTORS IN NEGOTIATION, LITIGATION, AND DECISION MAKING.....	77
Points for Discussion.....	78
ROBERT DINERSTEIN, STEPHEN ELLMAN, ISABELLE GUNNING & ANN SHALLECK, CONNECTION, CAPACITY AND MORALITY IN LAWYER-CLIENT RELATIONSHIPS.....	80
Points for Discussion.....	83
Points for Discussion.....	87
LEONARD L. RISKIN, THE CONTEMPLATIVE LAWYER: ON THE POTENTIAL CONTRIBUTIONS OF MINDFULNESS MEDITATION TO LAW STUDENTS, LAWYERS, AND THEIR CLIENTS.....	88
Points for Discussion.....	89
C. Counseling.....	90
1. Clarifying Issues and Interests.....	91
2. Considering the Relevant Law.....	91
3. Identifying Options.....	92
ALEX F. OSBORN, APPLIED IMAGINATION: PRINCIPLES AND PROCEDURES OF CREATIVE PROBLEM-SOLVING.....	92
ROBERT PIRSIG, ZEN AND THE ART OF MOTORCYCLE MAINTENANCE.....	93
Points for Discussion.....	94
4. Exploring Consequences.....	96
5. Facilitating Decision Making.....	97
a. Giving Advice.....	97
JENNIFER K. ROBBENNOLT & JEAN R. STERNLIGHT, PSYCHOLOGY FOR LAWYERS: UNDERSTANDING THE HUMAN FACTORS IN NEGOTIATION, LITIGATION, AND DECISION MAKING.....	98
Points for Discussion.....	99
b. Giving Bad News.....	99
MARJORIE CORMAN AARON, CLIENT SCIENCE: ADVICE FOR LAWYERS ON COUNSELING CLIENTS THROUGH BAD NEWS AND OTHER LEGAL REALITIES.....	100
Points for Discussion.....	101
D. The Law of the Attorney-Client Relationship.....	104
1. Authority to Settle.....	104
<i>Gatto v. Verizon Pennsylvania, Inc.</i> .....	105

<i>Fennell v. TLB Kent Company</i> .....	110
Points for Discussion .....	112
2. Settlement and Legal Malpractice.....	115
<i>Guido v. Duane Morris LLP</i> .....	116
Points for Discussion .....	120
E. A Lawyer's Duty to Advise Clients About Dispute Resolution Options.....	121
NANCY A. WELSH, INTEGRATING "ALTERNATIVE" DISPUTE RESOLUTION INTO BANKRUPTCY: AS SIMPLE (AND PURE) AS MOTHERHOOD AND APPLE PIE? .....	121
Points for Discussion.....	124
<b>Chapter 3: Negotiation</b> .....	127
A. Overview .....	128
1. Approach to Conflict .....	129
G. RICHARD SHELL, BARGAINING FOR ADVANTAGE: NEGOTIATION STRATEGIES FOR REASONABLE PEOPLE .....	129
Points for Discussion .....	132
2. Negotiation Skills.....	133
ANDREA KUPFER SCHNEIDER, TEACHING A NEW NEGOTIATION SKILLS PARADIGM.....	133
Points for Discussion .....	137
B. Fundamental Concepts.....	137
1. Interests.....	137
ROGER FISHER, WILLIAM URY & BRUCE PATTON, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN .....	138
Points for Discussion .....	141
2. Objective Criteria .....	143
G. RICHARD SHELL, BARGAINING FOR ADVANTAGE: NEGOTIATION STRATEGIES FOR REASONABLE PEOPLE .....	144
Points for Discussion .....	144
3. Best Alternative to a Negotiated Agreement.....	145
ROGER FISHER, WILLIAM URY & BRUCE PATTON, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN .....	146
Points for Discussion .....	147
4. The Negotiator's Dilemma .....	149
DAVID A. LAX AND JAMES K. SEBENIUS, THE MANAGER AS NEGOTIATOR.....	150
Points for Discussion .....	152
a. The Negotiator's Dilemma in Practice .....	153
RUSSELL KOROBKIN, A POSITIVE THEORY OF LEGAL NEGOTIATION .....	155
Points for Discussion .....	156
CARRIE J. MENKEL-MEADOW, TOWARD ANOTHER VIEW OF LEGAL NEGOTIATION: THE STRUCTURE OF PROBLEM SOLVING .....	158

Points for Discussion .....	161
CHARLES B. CRAVER, THE IMPACT OF NEGOTIATOR STYLES ON BARGAINING INTERACTIONS.....	163
Points for Discussion .....	165
5. Reputation and Trust .....	166
NANCY A. WELSH, THE REPUTATIONAL ADVANTAGES OF DEMONSTRATING TRUSTWORTHINESS: USING THE REPUTATION INDEX WITH LAW STUDENTS .....	167
Points for Discussion .....	169
C. The Negotiation Process.....	172
G. RICHARD SHELL, BARGAINING FOR ADVANTAGE: NEGOTIATION STRATEGIES FOR REASONABLE PEOPLE.....	173
Points for Discussion .....	173
1. Preparation .....	174
a. Reservation Points and Goals.....	175
RUSSELL KOROBKIN, A POSITIVE THEORY OF LEGAL NEGOTIATION.....	175
Points for Discussion .....	176
b. Options .....	180
CARRIE MENKEL-MEADOW, AHA? IS CREATIVITY POSSIBLE IN LEGAL PROBLEM SOLVING AND TEACHING IN LEGAL EDUCATION?.....	181
Points for Discussion .....	182
c. Information Gathering.....	182
d. Emotions .....	183
ROGER FISHER & DANIEL SHAPIRO, BEYOND REASON: USING EMOTIONS AS YOU NEGOTIATE .....	183
Points for Discussion .....	184
2. Information Exchange .....	186
Points for Discussion .....	186
a. Seeking Information.....	187
GRANDE LUM, THE NEGOTIATOR'S FIELDBOOK: SIMPLE STRATEGIES TO HELP YOU NEGOTIATE EVERYTHING.....	188
Points for Discussion .....	188
DEEPAK MALHOTRA & MAX H. BAZERMAN, INVESTIGATIVE NEGOTIATION .....	189
b. Sharing Information.....	192
CARRIE MENKEL-MEADOW, KNOW WHEN TO SHOW YOUR HAND .....	192
Points for Discussion .....	196
3. Offers and Concessions.....	199
a. Standard Concession Practice.....	199
G. RICHARD SHELL, BARGAINING FOR ADVANTAGE: NEGOTIATION STRATEGIES FOR REASONABLE PEOPLE.....	200
Points for Discussion .....	202

b.	Creating Value Through Offers and Concessions.....	207
	ROBERT H. MNOOKIN, SCOTT R. PEPPET & ANDREW S. TULUMELLO, BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES .....	208
	Points for Discussion .....	209
c.	Apologies .....	210
	JENNIFER K. ROBBENOLT, APOLOGY—HELP OR HINDRANCE? AN EMPIRICAL ANALYSIS OF APOLOGIES’ INFLUENCE ON SETTLEMENT DECISION MAKING.....	211
	Points for Discussion .....	212
d.	Hard Bargaining Tactics .....	213
	GARY GOODPASTER, A PRIMER ON COMPETITIVE BARGAINING.....	214
	JAMES E. WESTBROOK, HOW TO NEGOTIATE WITH A JERK WITHOUT BEING ONE.....	217
	Points for Discussion .....	219
e.	Commitment .....	222
	CHARLES B. CRAVER, SKILLS AND VALUES: LEGAL NEGOTIATING .....	222
	Points for Discussion .....	223
D.	Principals and Agents .....	224
	ROBERT H. MNOOKIN, SCOTT R. PEPPET, ANDRE S. TULUMELLO, BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES.....	225
	Points for Discussion.....	227
E.	Ethical and Legal Limitations .....	229
1.	Attorney Negotiation Ethics.....	229
	JAMES J. WHITE, MACHIAVELLI AND THE BAR: ETHICAL LIMITATIONS ON LYING IN NEGOTIATION.....	230
	ART HINSHAW & JESS K. ALBERTS, DOING THE RIGHT THING: AN EMPIRICAL STUDY OF ATTORNEY NEGOTIATION ETHICS.....	235
a.	Rule 4.1(a).....	235
b.	Rule 4.1(b) .....	236
	Points for Discussion .....	237
2.	The Law of Bargaining .....	241
	<i>Hoyt Properties, Inc. v. Production Resource Group, L.L.C.</i> .....	241
	Points for Discussion .....	246
F.	Differences in Negotiators .....	248
1.	Culture .....	249
	JAYNE SEMINARE DOCHERTY, CULTURE AND NEGOTIATION: SYMMETRICAL ANTHROPOLOGY FOR NEGOTIATORS .....	249
	Points for Discussion .....	251
2.	Gender .....	252
	CARRIE MENKEL-MEADOW, WHAT DIFFERENCE DOES “GENDER DIFFERENCE” MAKE?.....	253
	Points for Discussion .....	254

3. Race.....	257
IAN AYERS, FAIR DRIVING: GENDER AND RACE	
DISCRIMINATION IN RETAIL CAR NEGOTIATIONS.....	258
Points for Discussion.....	261
<b>Chapter 4: Mediation.....</b>	<b>263</b>
A. Approaches to Mediation.....	265
1. Mapping Mediation Orientations.....	266
LEONARD L. RISKIN, UNDERSTANDING MEDIATORS' ORIENTATIONS, STRATEGIES,	
AND TECHNIQUES: A GRID FOR THE PERPLEXED.....	266
Points for Discussion.....	279
LEONARD L. RISKIN, REPLACING THE MEDIATOR ORIENTATION GRIDS, AGAIN:	
THE NEW NEW GRID SYSTEM.....	280
Points for Discussion.....	289
2. A Few Particular Approaches.....	290
a. Classic Mediation.....	292
LEONARD L. RISKIN, MEDIATION TRAINING GUIDE.....	292
Points for Discussion.....	305
b. Transformative Mediation.....	307
ROBERT A. BARUCH BUSH & JOSEPH FOLGER, THE PROMISE OF	
MEDIATION: THE TRANSFORMATIVE APPROACH TO CONFLICT.....	307
Points for Discussion.....	313
c. Understanding-Based Mediation.....	314
GARY FRIEDMAN & JACK HIMMELSTEIN, CHALLENGING CONFLICT:	
MEDIATION THROUGH UNDERSTANDING.....	314
Point for Discussion.....	316
d. Analytical Mediation.....	316
JOHN BICKERMAN, ADAPTING MEDIATION TO WHAT USERS WANT.....	316
Points for Discussion.....	319
3. Mediator Strategies in Depth.....	321
a. Mediators' Strategies and Their Effects.....	322
DEBORAH THOMPSON EISENBERG, WHAT WE KNOW AND NEED	
TO KNOW ABOUT COURT-ANNEXED DISPUTE RESOLUTION.....	322
ABA SECTION OF DISPUTE RESOLUTION, REPORT OF THE TASK FORCE	
ON RESEARCH ON MEDIATOR TECHNIQUES.....	324
Points for Discussion.....	326
b. Use of Joint Sessions and Caucus in Mediation.....	327
B. Mediation in Context.....	332
1. Court-Connected Mediation in the U.S. ....	332
a. The Federal Courts' Institutionalization of Mediation.....	333
NANCY A. WELSH, MAGISTRATE JUDGES, SETTLEMENT AND	
PROCEDURAL JUSTICE.....	333
Points for Discussion.....	335

b.	Lessons for the Successful Institutionalization of Court-Connected Mediation .....	338
	BOBBI McADOO, NANCY A. WELSH & ROSELLE L. WISSLER, INSTITUTIONALIZATION: WHAT DO EMPIRICAL STUDIES TELL US ABOUT COURT MEDIATION? .....	338
2.	Mediation by Another Name? .....	343
3.	Mediation Outside the U.S. ....	344
4.	International Mediation .....	346
C.	The Mediator .....	347
1.	Sources and Backgrounds .....	347
2.	Training .....	348
3.	Regulation .....	349
	ART HINSHAW, REGULATING MEDIATORS .....	349
	Points for Discussion .....	357
a.	Credentialing .....	359
	SOCIETY OF PROFESSIONALS IN DISPUTE RESOLUTION, QUALIFYING NEUTRALS: THE BASIC PRINCIPLES (REPORT OF THE SPIDR COMMISSION ON QUALIFICATIONS) .....	359
	Points for Discussion .....	361
	DISPUTE RESOLUTION SECTION OF THE AMERICAN BAR ASSOCIATION, TASK FORCE ON MEDIATOR CREDENTIALING .....	361
	Points for Discussion .....	367
b.	Ethical Requirements for Mediators and Lawyer-Mediators .....	369
	MODEL STANDARDS OF CONDUCT FOR MEDIATORS .....	370
	Points for Discussion .....	372
	<i>McKenzie Construction v. St. Croix Storage</i> .....	376
	Points for Discussion .....	382
	Points for Discussion .....	390
c.	Malpractice Liability and Mediator Immunity .....	391
	<i>Wagshal v. Foster</i> .....	391
	Points for Discussion .....	397
D.	Parties, Lawyers, and Mediation Advocacy .....	399
1.	Getting into Mediation .....	400
a.	<i>Ad Hoc</i> Mediation .....	400
	J. MICHAEL KEATING, JR., GETTING RELUCTANT PARTIES TO MEDIATE: A GUIDE FOR ADVOCATES .....	401
	Points for Discussion .....	402
b.	Mandatory Mediation .....	403
	NANCY A. WELSH & ANDREA KUPFER SCHNEIDER, THE THOUGHTFUL INTEGRATION OF MEDIATION INTO BILATERAL INVESTMENT TREATY ARBITRATION .....	404
	Points for Discussion .....	407

LAUREL WHEELER, COMMENT, MANDATORY FAMILY MEDIATION AND DOMESTIC VIOLENCE .....	409
Points for Discussion .....	411
2. Selecting a Mediator .....	412
a. Mediator Background, Approach, and Reputation .....	412
LEONARD L. RISKIN, UNDERSTANDING MEDIATORS' ORIENTATIONS, STRATEGIES, AND TECHNIQUES: A GRID FOR THE PERPLEXED .....	412
Points for Discussion .....	416
THE ABA SECTION OF DISPUTE RESOLUTION TASK FORCE ON IMPROVING MEDIATION QUALITY .....	419
Points for Discussion .....	426
b. Mediator "Presence" .....	427
DANIEL BOWLING & DAVID A. HOFFMAN, BRINGING PEACE INTO THE ROOM: HOW THE PERSONAL QUALITIES OF THE MEDIATOR IMPACT THE PROCESS OF CONFLICT RESOLUTION .....	427
Points for Discussion .....	429
3. Mediation Advocacy and Problem-Solving .....	429
TOM ARNOLD, 20 COMMON ERRORS IN MEDIATION ADVOCACY .....	430
Points for Discussion .....	437
LEONARD L. RISKIN, THE REPRESENTED CLIENT IN A SETTLEMENT CONFERENCE: THE LESSONS OF <i>G. HEILEMANN BREWING CO. V. JOSEPH OAT CORP.</i> .....	437
Points for Discussion .....	442
4. The Consulting Lawyer .....	444
GARY FRIEDMAN & JACK HIMMELSTEIN, DEAL KILLER OR DEAL SAVER: THE CONSULTING LAWYER'S DILEMMA .....	444
Points for Discussion .....	447
E. Litigation About Mediation .....	447
1. Overview .....	448
JAMES R. COBEN & PETER N. THOMPSON, MEDIATION LITIGATION TRENDS: 1999–2007 .....	448
Points for Discussion .....	453
2. Enforcement of Mediated Settlement Agreements .....	453
3. Good Faith Participation in Mediation .....	455
4. Confidentiality and the Mediation Privilege .....	458
a. A Cornerstone, and a Challenge .....	458
<i>Olam v. Congress Mortgage Co.</i> .....	460
Points for Discussion .....	467
b. The Purpose, Meaning, and Structure of Confidentiality and the Mediation Privilege .....	468
Points for Discussion .....	473
c. A Closer Look at Privilege: The UMA .....	474
UNIFORM MEDIATION ACT .....	474

Points for Discussion .....	476
d. A Closer Look at the Categorical Exclusion: California .....	479
<i>Cassel v. Superior Court of Los Angeles County</i> .....	479
Points for Discussion .....	485
F. Fairness, Formality, and Self-Determination in Mediation .....	488
NANCY A. WELSH, THE THINNING VISION OF SELF-DETERMINATION IN COURT- CONNECTED MEDIATION: THE INEVITABLE PRICE OF INSTITUTIONALIZATION? ....	489
Points for Discussion .....	491
LEONARD L. RISKIN & NANCY A. WELSH, WHAT'S IT ALL ABOUT?: FINDING THE APPROPRIATE PROBLEM DEFINITION IN MEDIATION .....	494
Points for Discussion .....	502
<b>Chapter 5: Arbitration</b> .....	505
A. The Practice and Procedures of Private Arbitration .....	506
1. The Uses and Growth of Arbitration .....	507
2. The Arbitrator.....	508
3. Arbitration Institutions .....	510
4. The Arbitration Process.....	511
STEPHEN HAYFORD & RALPH PEEPLES, COMMERCIAL ARBITRATION: AN ASSESSMENT AND CALL FOR DIALOGUE .....	512
Points for Discussion .....	515
B. The Legal Framework for Arbitration Under the FAA .....	516
1. Preliminary Considerations.....	516
a. A Brief Summary of the FAA .....	516
b. Arbitrability .....	517
<i>First Options of Chicago, Inc. v. Kaplan</i> .....	518
Points for Discussion .....	522
<i>Howsam v. Dean Witter Reynolds, Inc.</i> .....	523
Points for Discussion .....	526
<i>Prima Paint Corp. v. Flood &amp; Conklin MFG. Co.</i> .....	526
Points for Discussion .....	531
c. Which Law Applies? FAA Preemption.....	535
<i>Southland Corp. v. Keating</i> .....	536
Points for Discussion .....	542
<i>AT&amp;T Mobility LLC v. Concepcion</i> .....	545
Points for Discussion .....	554
<i>Volt Information Sciences, Inc. v. Board of Trustees of Leland             Stanford Junior University</i> .....	556
Points for Discussion .....	560

2. Section 2: The Heart of the FAA.....	561
a. Arbitration Agreements ‘Shall Be Valid, Irrevocable, and Enforceable . . .’ .....	562
<i>Wilko v. Swan</i> .....	562
Points for Discussion .....	563
<i>Gilmer v. Interstate/Johnson Lane Corp.</i> .....	564
Points for Discussion .....	570
b. ‘ . . . Save Upon Such Grounds as Exist in Law and Equity for the Revocation of Any Other Contract.’ .....	574
<i>Chavarria v. Ralphs Grocery Co.</i> .....	576
Points for Discussion .....	584
<i>Hooters of America, Inc. v. Phillips</i> .....	586
Points for Discussion .....	592
3. Section 10: Judicial Review of Arbitration Awards.....	594
a. In General.....	594
<i>Sobel v. Hertz, Warner &amp; Co.</i> .....	594
Points for Discussion .....	599
b. Contracted Judicial Review .....	606
<i>Hall Street Associates, L.L.C. v. Mattel, Inc.</i> .....	607
Points for Discussion .....	611
c. Does the Law Apply? .....	614
Points for Discussion .....	617
C. Special Topics .....	619
1. Class Actions .....	619
<i>Stolt Neilsen SA v. Animalfeeds International Corp.</i> .....	619
Points for Discussion .....	628
2. Confidentiality.....	630
<i>United States v. Panhandle Eastern Corp.</i> .....	630
Points for Discussion .....	634
3. Ethics .....	636
KRISTEN BLANKLEY, TAMING THE WILD WEST OF ARBITRATION ETHICS .....	636
Points for Discussion .....	641
4. International Commercial Arbitration .....	641
5. Constitutional Issues .....	642
RICHARD C. REUBEN, CONSTITUTIONAL GRAVITY: A UNITARY THEORY OF ALTERNATIVE DISPUTE RESOLUTION AND PUBLIC CIVIL JUSTICE.....	643
Points for Discussion .....	646
<b>Chapter 6: Mixed Processes, Adaptations, and Other Innovations ...</b>	<b>649</b>
A. The Public Sphere.....	650
1. The Courts.....	650
a. The Big Picture.....	650

	DONNA STIENSTRA, ADR IN THE FEDERAL DISTRICT COURTS:	
	AN INITIAL REPORT .....	650
	Points for Discussion .....	660
2.	Court-Annexed Mediation .....	663
3.	Court-Annexed “Mixed Processes” .....	663
a.	Court-Annexed Arbitration .....	663
b.	Summary Jury Trial.....	664
	THOMAS LAMBROS, THE SUMMARY JURY TRIAL AND	
	OTHER ALTERNATIVE METHODS OF DISPUTE RESOLUTION.....	664
	Points for Discussion .....	665
c.	Early Neutral Evaluation .....	666
	WAYNE D. BRAZIL, EARLY NEUTRAL EVALUATION .....	666
	Points for Discussion .....	670
d.	Innovative Processes for Mass Personal Injury Litigation.....	671
	GEORGE W. CONK, DIVING INTO THE WRECK:	
	BP AND KENNETH FEINBERG’S GULF COAST GAMBIT .....	671
	Points for Discussion .....	678
4.	Administrative Agencies.....	679
a.	An Overview .....	680
	2016 REPORT ON SIGNIFICANT DEVELOPMENTS IN FEDERAL ALTERNATIVE	
	DISPUTE RESOLUTION .....	680
	Points for Discussion .....	689
b.	Setting Agency Policy: “Reg Negs”.....	690
5.	Dispute Resolution and Democratic Governance .....	691
	RICHARD C. REUBEN, DEMOCRACY AND DISPUTE RESOLUTION:	
	THE PROBLEM OF ARBITRATION.....	691
	Points for Discussion .....	698
B.	The Private Sphere .....	699
1.	Collaborative Lawyering .....	699
	JOHN LANDE, POSSIBILITIES FOR COLLABORATIVE LAW: ETHICS	
	AND PRACTICE OF LAWYER DISQUALIFICATION AND PROCESS	
	CONTROL IN A NEW MODEL OF LAWYERING .....	699
	Points for Discussion .....	701
2.	Med-Arb .....	702
	BRIAN PAPPAS, MED-ARB AND THE LEGALIZATION	
	OF ALTERNATIVE DISPUTE RESOLUTION.....	702
	Points for Discussion .....	706
3.	Online Dispute Resolution.....	706
	LOUIS DEL DUCA, COLIN RULE & ZBYNEK LOEBL, FACILITATING EXPANSION OF	
	CROSS-BORDER E-COMMERCE—DEVELOPING A GLOBAL	
	ONLINE DISPUTE RESOLUTION SYSTEM.....	706
	Points for Discussion .....	713

<b>Chapter 7: Designing and Selecting Dispute Resolution Processes</b> .....	717
A. Overarching Considerations.....	718
1. In General.....	718
NAT'L INST. FOR DISPUTE RESOLUTION, PATHS TO JUSTICE:	
MAJOR PUBLIC POLICY ISSUES OF DISPUTE RESOLUTION .....	719
Points for Discussion .....	722
2. Procedural Justice .....	722
REBECCA HOLLANDER-BLUMOFF & TOM R. TYLER, PROCEDURAL JUSTICE	
AND THE RULE OF LAW: FOSTERING LEGITIMACY IN ALTERNATIVE	
DISPUTE RESOLUTION .....	723
Points for Discussion .....	724
3. Public Policy Implications.....	729
FRANK E.A. SANDER & STEPHEN B. GOLDBERG, FITTING THE FORUM TO THE	
FUSS: A USER-FRIENDLY GUIDE TO SELECTING AN ADR PROCEDURE .....	729
Points for Discussion .....	730
B. Designing and Evaluating Conflict Management Systems .....	733
1. Systems Design.....	733
CATHY COSTANTINO, USING INTEREST-BASED TECHNIQUES TO	
DESIGN CONFLICT MANAGEMENT SYSTEMS .....	734
Points for Discussion .....	741
2. Evaluating Dispute Resolution Systems.....	749
DONNA STIENSTRA, EVALUATING AND MONITORING ADR PROCEDURES .....	749
Points for Discussion .....	753
C. Advising Clients in Selecting a Dispute Resolution Process .....	758
1. Selecting a Process .....	759
FRANK E.A. SANDER & LUKASZ ROZDEICZER, MATCHING CASES AND	
DISPUTE RESOLUTION PROCEDURES: DETAILED ANALYSIS LEADING	
TO A MEDIATION-CENTERED APPROACH .....	759
Points for Discussion .....	770
2. Multi-Step Options .....	771
KATHLEEN M. SCANLON & HARPREET K. MANN,	
A GUIDE TO MULTI-STEP DISPUTE RESOLUTION CLAUSES.....	771
Points for Discussion .....	774
<b>Chapter 8: Looking Ahead</b> .....	777
A. New Connections.....	777
SUSAN SWAIM DAICOFF, EXPANDING THE LAWYER'S TOOLKIT OF SKILLS AND	
COMPETENCIES: SYNTHESIZING LEADERSHIP, PROFESSIONALISM, EMOTIONAL	
INTELLIGENCE, CONFLICT RESOLUTION, AND COMPREHENSIVE LAW .....	778
Points for Discussion.....	789

RICHARD BIRKE, NEUROSCIENCE AND SETTLEMENT: AN EXAMINATION OF SCIENTIFIC INNOVATIONS AND PRACTICAL APPLICATIONS.....	790
Points for Discussion .....	797
B. New Skills .....	798
LEONARD L. RISKIN, MINDFULNESS: FOUNDATIONAL TRAINING FOR DISPUTE RESOLUTION .....	799
Points for Discussion .....	803
C. New Opportunities.....	806
1. Entering the Stream: Professional Organizations .....	806
2. Personal Stories .....	808
JAMES J. ALFINI & ERIC GALTON, ADR PERSONALITIES AND PRACTICE TIPS.....	808
Points for Discussion .....	820
Appendix .....	821
Index.....	823